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Refer Reply To:
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Date:
January 22, 2007

Dear _____ :

This is in response to a letter dated June 23, 2006, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §301.9100-3 to (1) make the election provided by section 953(d) of the Code to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's taxable year for Year W and (2) make the election provided by section 831(b) for the alternative tax for certain small insurance companies for Year W.

The rulings contained in this letter are predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer is an insurance company incorporated as an "exempted company" in Country D on Date A to provide Type E insurance. It is a wholly owned subsidiary of Parent, a domestic corporation. From Taxpayer's inception in Year W through Date B, Taxpayer received premium payments of \$Y and income from investments of premium income of \$Z.

In the course of forming and initiating the operations of Taxpayer, Parent and its officers claim that it was their intent that the new company fully comply with U.S. tax reporting obligations. To this end, Taxpayer retained the assistance of several large professional firms to advise Taxpayer and Parent on all aspects of legal and tax compliance. However, the facts and affidavit indicate that the due to miscommunication between the advisors, Parent was not advised of the election options under sections 953(d) and 831(b) for Tax Year W until Date F. Taxpayer timely filed the elections for Tax Year X. It has not filed for Tax Year W pending the result of this private letter ruling request. An officer of Taxpayer and Parent represents that neither Taxpayer nor Parent have received notice from the IRS with respect to the failure or late filing of any return or form.

The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392 and Rev. Proc. 2003-47, 2003-2 C.B. 55, respectively. These rules provide that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Section 4.04(2), Rev. Proc. 2003-47. In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Section 1, Notice 89-79. The section 953(d) election was not filed by the due date of the return for Tax Year W that started on Date A and was not a timely election.

Generally, insurance companies other than life insurance companies are taxable under section 831(a) on their taxable income. However, certain eligible companies pay an alternative tax provided in section 831(b) based only on their taxable investment

income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b) for the taxable year. The statute does not contain a due date. The election under section 831(b)(2)(A) is listed in section 301.9100-8(a) of the regulations as section 1010(f)(1) of the Technical and Miscellaneous Act of 1988 and is available for taxable years beginning after December 31, 1986. Treas. Reg. §301.9100-8(a)(2) prescribes the time and manner for making the election under section 831(b)(2)(A)(ii) of the Code. That section provides that the election must be made by the later of---

- (A) the due date (taking into account any extensions of time to file, obtained by the taxpayer) of the tax return for the first taxable year for which the election was effective, or
- (B) January 22, 1990.

Treas. Reg. §301.9100-8(a)(3) also provides that if the tax return has not been filed prior to making the election under section 831(b)(2)(A)(ii), the election must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective. If such tax return is filed prior to the making of the election, the statement must be attached to an amended tax return of the first taxable year for which the election is to be effective. The section 831(b) election was not timely made in accordance with these provisions.

Treas. Reg. §301.9100-1(c) provides, in relevant part, that the Commissioner, in his discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §301.9100-3 to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all the subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. §301.9100-3(b)(1) provides that except as provided in Treas. Reg. §301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account

the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Internal Revenue Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. §301.9100-3(c)(1) provides in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by granting the relief.

Based solely on the facts and information submitted we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3(a) with respect to the section 953(d) election. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by I.R.C. section 953(d) in accordance with the rules set forth in Notice 89-79 and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes effective for the tax year ended on Date B. Further, based on the Taxpayer qualifying to make the election under section 953(d), the Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 831(b) for the tax year ended on Date B.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the elections under section 953(d) or section 831. Treas. Reg. §301.9100-1(a).

Notwithstanding that an extension of time is granted under Treas. Reg. §301.9100-3 to make the section 953(d) election and the section 831(b) election, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the income tax return for the tax year ended on Date B.

A copy of this ruling letter should be associated with Taxpayer's section 953(d) and section 831(b) elections.

The ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

Phyllis Marcus
Chief, Branch 2
Office of Associate Chief Counsel
(International)